

OUR FILE NO.: 090.155440  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ADRIAN SCHOOLCRAFT,

Docket No.: 10-CIV-6005

Plaintiff,

- against -

THE CITY OF NEW YORK, DEPUTY CHIEF MICHAEL MARINO, Tax Id. 873220, Individually and in his Official Capacity, ASSISTANT CHIEF PATROL BOROUGHS BROOKLYN NORTH GERALD NELSON, Tax Id. 912370, Individually and in his Official Capacity, DEPUTY INSPECTOR STEVEN MAURIELLO, Tax Id. 895117, Individually and in his Official Capacity, CAPTAIN THEODORE LAUTERBORN, Tax Id. 897840, Individually and in his Official Capacity, LIEUTENANT JOSEPH GOFF, Tax Id. 894025, Individually and in his Official Capacity, stg. Frederick sawyer, Shield No. 2576, Individually and in his Official Capacity, SERGEANT KURT DUNCAN, Shield No. 2483, Individually and in his Official Capacity, LIEUTENANT CHRISTOPHER BROSCART, Tax Id. 915354, Individually and in his Official Capacity, LIEUTENANT TIMOTHY CAUGHEY, Tax Id. 885374, Individually and in his Official Capacity, SERGEANT SHANTEL JAMES, Shield No. 3004, and P.O.'s "JOHN DOE" #1-50, Individually and in their Official Capacity (the name John Doe being fictitious, as the true names are presently unknown) (collectively referred to as "NYPD defendants"), JAMAICA HOSPITAL MEDICAL CENTER, DR. ISAK ISAKOV, Individually and in his Official Capacity, DR. LILIAN ALDANA-BERNIER, Individually and in her Official Capacity and JAMAICA HOSPITAL MEDICAL CENTER EMPLOYEE'S "JOHN DOE" # 1-50, Individually and in their Official Capacity (the name John doe being fictitious, as the true names are presently unknown),

**EXPERT DISCLOSURE  
OF DEFENDANT  
DR. LILIAN ALDANA-  
BERNIER**

Defendants.  
-----X

**COUNSELORS:**

**PLEASE TAKE NOTICE**, that pursuant to Rule 26 of the Federal Rules of Civil Procedure and the Court's scheduling Order, Dr. Aldana-Bernier submits the following expert witness disclosure:

CALLAN, KOSTER,  
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COUNSELORS AND  
ATTORNEYS AT LAW  
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212-248-8800

1. Statement of opinions by witness: see attached report as Exhibit "A".
2. Information considered by witness: the documents to which the witness refers in the attached report as Exhibit "A".
3. Possible exhibits to be used by witness: the documents to which the witness refers are listed in the attached report as Exhibit "A".
4. Witness qualifications: see attached C.V. as Exhibit "B".

Testimony in the past four years: To be provided in a supplement disclosure.

5. Fee: To be provided in a supplemental disclosure.

**PLEASE TAKE FURTHER NOTICE**, defendant reserves the right to supplement this disclosure at any time up to and including the time of trial.

Dated: New York, New York  
September 18, 2014

Yours, etc.,

CALLAN, KOSTER, BRADY & BRENNAN, LLP

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**“A”**

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September 18, 2014

Paul F. Callan, Esq.  
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One Whitehall Street  
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Re: Liliana Aldana-Bernier, M.D. adv. Adrian Schoolcraft  
Your File No.: 090.155440

Dear. Mr. Callan:

I have reviewed portions of the Jamaica Hospital records available to Dr. Liliana Aldana-Bernier at the time she examined the plaintiff Adrian Schoolcraft. In addition, I have reviewed relevant portions of her deposition transcript, and the report of the Plaintiff's expert, Roy Lubit, MD, Ph.D.

Dr. Liliana Aldana-Bernier evaluated the Plaintiff, Adrian Schoolcraft, at the Jamaica Hospital on November 1, 2009, and on the basis of her review of the following she concluded that he should be admitted to the hospital:

1. EMS records and those from his evaluation in the Medical Emergency Room. Mr. Schoolcraft was brought into the Medical ER of Jamaica Hospital on October 31, 2009, by members of the New York Police Department. Early that day he had an altercation with an officer, felt threatened, and claiming that he was not feeling well with abdominal pain and discomfort, left his job prior to completion of his shift. Members of the NYPD went to his home, where he had barricaded himself in his room. Apparently the policemen were able to gain entrance into his room. One version is that they broke down the door; a second states that the police got the landlord to open the door. In any case, he was requested to accompany them to the precinct. He refused, whereupon the police put him in handcuffs and involuntarily had him taken to the emergency room of Jamaica Hospital for evaluation.

The records revealed that he was bizarre in his behavior, uncooperative, suspicious, guarded and agitated before, on entering the hospital and during the medical evaluation. Furthermore, he manifested paranoid thinking. After medical clearance, a psychiatrist evaluated him and transferred him to the Psychiatric Emergency Room with a tentative diagnosis of psychosis NOS.

2. Dr. Aldana-Bernier, who was the Director of the Psychiatric ER, also read the psychiatric evaluation of the resident, and evaluated Mr. Schoolcraft herself noting his paranoid and persecutory thinking about police conspiracies, cover-ups, and claims that the police were "after him." Her concerns were further augmented by information that six months or more previously he was evaluated by a psychiatrist in the police department and found to be emotionally unstable. As a result, his gun was taken away from him at that time.

She took all these factors into consideration including the realization that as a policeman he would likely have access to weapons, even though his gun had been removed, that he was living alone with few friends or available collaterals, and no doubt further appreciated that he was a big man, estimated 250 lbs, and could be bodily injurious to others, particularly given his compromised mental state and manifested lack of judgment. On the basis of these facts, she concluded that he was a foreseeable danger to himself or others and needed additional time in the hospital for medical stabilization. She committed him under the Mental Hygiene Law Section 9.39, which provides for Emergency Admission when a person is deemed to have a "mental illness for which immediate observation, care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others." The phrase "substantial risk of physical harm" is included in the language of the relevant statute. Underlying these concepts is a notion of "foreseeability".

This law, Section 9.39, allows for 48 hours observation during which time the patient is further evaluated, others are contacted with more time available and a detailed analysis is conducted to determine whether the more "freedom restricting" confinement--that of 15 days following the assessment of a second physician, should be conducted. The Emergency Admission (or commitment) is often done quickly in an emergency room with frequently inadequate information available; it is a judgment call as is the case with any "risk" analysis. There is inevitably uncertainty inherent in risk assessment. (See: Buchanan A.; R. Binder; M. Norko et al: Psychiatric Violence Risk Assessment; *Am J Psychiatry* 2012, 169: 340 ff. for a detailed discussion of the conceptual problems of risk assessment): On the other hand, where factors, such as those in this case, lead to a reasonable conclusion by the clinician that there is foreseeable "substantial" risk of harm to self or others, it is essential to minimize serious adverse outcomes and, therefore, commit the individual.

Dr. Aldana-Bernier's deposition reveals a general knowledge about Section 9.39 of The Mental Hygiene Law. She showed that she understood the limited applicability of that law, the importance of "dangerousness" to self and others, and her understanding that she must do at that moment of decision-making what is best for the patient and for society at large. She made a judgment call that he was potentially (foreseeably) dangerous. And at the time when she did that she was forced to rely on only that information, which was readily available. The very recent history of bizarre behavior, uncooperativeness, paranoid ideation, agitation, general aggressiveness, and verbal confrontation (altercation with the officer earlier on 10.31.09, and cursing in the Medical

ER), along with an evaluation of emotional instability resulting in removal of his gun months earlier formed the basis of her triggering Section 9.39 of the Mental Hygiene Law. She demonstrated in this judgment not only an adequate understanding of the law, but in addition a reasonable "judicious" application of the Emergency Admissions standard. Dr. Aldana- Bernier was additionally professional by presenting the case to the Associate Chairman of the Psychiatry Department, Dr. Dhar, who concurred with her analysis and decision for Emergency Admission. It is very important to get a second opinion, the perspective of someone to provide a fresh look at the data, and someone who as a top administrator in the department has likely provided oversight for similar situations.

The diagnosis, Psychosis NOS", was given initially when Mr. Schoolcraft was first seen by the psychiatrist in the ER and subsequently used by Dr. Aldana-Bernier during the period of emergency admission until a final diagnosis of "Adjustment disorder with Anxious Mood". The diagnosis of "Psychosis NOS" was essentially a working diagnosis. This diagnosis was present in DSM-IV-TR, which was the operating handbook for mental disorders in 2009. This diagnosis is not explicitly designated in the most recent DSM-V-TM. The criteria for Psychotic Disorder Not Otherwise Specified (NOS) (DSM-IV-TR # 298.9) states in its general description the following:

"This category includes psychotic symptomatology (i.e., delusions, hallucinations, disorganized speech, grossly disorganized or catatonic behavior) about which there is inadequate information to make a specific diagnosis or about which there is contradictory information, or disorders with psychotic symptoms that do not meet the criteria for any specific Psychotic Disorder"

Note that not all of the symptoms must be present; in fact one of these, such as delusions, would fit. For example, the description gives the following three illustrations (among others) which in part fit patterns in this case:

1. Psychotic symptoms that have lasted for less than 1 month but that have not yet remitted, so that the criteria for Brief Psychotic Disorder are not met.
2. Persistent nonbizarre delusions with periods of overlapping mood episodes that have been present for a substantial portion of the delusional disturbance
3. Situations in which the clinician has concluded that a Psychotic disorder is present, but is unable to determine whether it is primary, due to a general medical condition, or substance induced.

The presence, therefore of paranoid (persecutory ideation and delusions), in addition to bizarre behavior, suspiciousness and guarded responses, agitation, and aggressive verbal confrontation (the bizarre behavior, agitation etc. may suggest a mood disorder) would most likely fit under the criteria of Psychotic Disorder-NOS



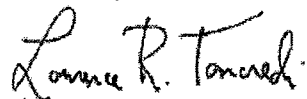
With regards to paranoid thinking and delusions there is no necessity that the objects of the paranoia be extra-terrestrial beings, aliens etc. In fact paranoid delusions most often involve abnormal configuring of the usual objects and images of everyday life into unrealistic systems. Paranoia often involves people in the very existence of an afflicted persons-- for examples, a boss, a lover, a parent or sib. The person suffering from paranoia will place these usual objects into bizarre, and threatening situations and relate the potential danger wholly to themselves. The paranoia expressed by Mr. Schoolcraft--conspiracy of the police, the perception that they are out "to get him"-- is in fact a usual form of paranoid delusion.

### CONCLUSION

In effect Dr. Aldana-Bernier's assessment of Mr. Schoolcraft was consistent with a good standard of psychiatric care, including her reliance on the reports of others working in the emergency room and providing supplementary information, such as the police. As an emergency room psychiatrist she is limited in her time for conducting a full investigation of the circumstances surrounding a patient's thinking and behavior. She has a short time to quickly assess the mental status of a patient, and, in particular, to determine if he or she is a danger to themselves or others. This is not an exact analysis by any means. But given the factors that she examined as they combine to form a profile of a disturbed person, she used good judgment admitting the patient for 48 hours to allow for a more extensive gathering of the facts and a period of stabilization for a better opportunity to assess the patient's psychiatric condition.

**As a result it is my conclusion that to a reasonable degree of medical certainty Dr. Aldana-Bernier met acceptable standards of psychiatric practice in her evaluation of Mr. Schoolcraft and in her decision to apply Section 9.39 of the Mental Hygiene Law to have him admitted for a 48 hour period for further evaluation and stabilization.**

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Laurence R. Tancredi". The signature is fluid and cursive, with the first name "Laurence" and last name "Tancredi" clearly distinguishable.

Laurence R. Tancredi, MD, JD



“B”

Laurence R. Tancredi, MD, JD  
129-B East 71<sup>st</sup>. Street  
New York, N.Y. 10021

EDUCATION: A.B., Franklin & Marshall College, 1962, Phi Beta Kappa  
M.D., University of Pennsylvania School of Medicine, 1966  
J.D., Yale University School of Law, 1972

INTERNSHIP: Presbyterian-University of Pennsylvania Medical Center  
(Straight Medicine, 1966-67)

RESIDENCY: Department of Psychiatry, Columbia University, (1974-75)  
Department of Psychiatry, Yale University School of  
Medicine (1975-77)

Board Certification: Psychiatry  
Bar Membership: New York State

PRESENT  
EMPLOYMENT: Private Psychiatric Practice and Consultation  
  
Professor of Clinical Psychiatry, New York University  
Medical School (1992- )  
  
Clinical Professor of Health Care Sciences, University of  
California at San Diego School of Medicine (1993-2003)

PAST  
EMPLOYMENT: Medical Director, The Regent Hospital  
New York City (1992-1993)  
  
Kraft Eidman Professor, Medicine and the Law; Director of  
the Health Law Program  
Professor of Psychiatry, Director of Forensic Psychiatry  
Training and Research Program, Department of Psychiatry  
Associate Director, Institute for Health Policy Education  
and Research  
Professor of Health Law, School of Public Health  
University of Texas Health Science Center (1984-1992)  
  
Medical Staff, Courtesy Status at the Harris County  
Psychiatric Center (1989-1992)  
  
Associate Professor of Psychiatry and Law, New York  
University Medical School, Department of Psychiatry (1977-84)  
  
Adjunct Professor of Law, New York University Law School  
(1981-84)

Visiting Professor of Law, New York University Law School  
(1978-1981)

Senior Professional Associate, Institute of Medicine,  
National Academy of Sciences, 2101 Constitution Avenue,  
Washington, D.C. 20418 (1972-74)

MILITARY  
SERVICE:

United States Public Health Service, (1967-69) National  
Center for Health Services Research and Development, Health  
Services and Mental Health Administration

COMMITTEE  
APPOINTMENTS:

Appointment by The Mayor: The Community Services Board of  
the Department of Mental Health, Mental Retardation and  
Alcoholism Services, City of New York (1995-2001).

Appointment by the New York City Police Commissioner:  
Honorary Police Surgeon, New York City (1997-2004)

National Advisory Board, NIMH Center for the Study of  
Issues of Public Mental Health. New York State Office of  
Mental Health (1994-97)

Scientific Advisory Committee, American Foundation for  
Suicide Prevention (1995- )

Advisory Panel: Defensive Medicine and The Use of Medical  
Technology. Office of Technology Assessment, United States  
Congress (1992-94).

Advisory Committee: "Ethical and Legal Implications of  
Genetic Testing," American Association for the Advancement  
of Science (1989-92)

Task Force: Scientific Responsibility and Integrity in  
Medical Research. American College of Cardiology,  
Bethesda, Maryland (1989-90)

Member: Institute of Medicine. Committee to Plan for a  
Study of the Artificial Heart Program of the National  
Heart, Lung and Blood Institute (NHLBI) (July 1989 -  
October 1989)

Clozaril (clozapine) Advisory Board: Sandoz Pharmaceutical  
Corporation (1988- )

Project Review Panel: Science, Technology, and the  
Constitution. Office of Technology Assessment, United  
States Congress (1987-88)

Advisory Panel: The Quality of Medical Care: Information  
for Consumers. Office of Technology Assessment, United  
States Congress (1987-88)

Member: National Conference of Lawyers and Scientists.  
Committee under joint sponsorship by American Association  
for the Advancement of Science and American Bar Association  
(1987-90)

Advisory Board: Health Law Program, DePaul University  
(1987-1992).

Advisory Board: Health Law Program, University of Houston  
School of Law (1987-90).

Board of Directors, International Academy of Law and  
Psychiatry (1984- ); Vice President (1987-1992) (2003-2007)

Board of Trustees; The Society of Medical Jurisprudence,  
New York (1984-85)

Professional Advisory Board, Medical Quadrangle  
Corporation, New York (1983-85)

Board of Technical Directors; Milbank Memorial Fund, New  
York (1982-84) (1989-91)

Advisory Committee on Heart Transplantations: Health Care  
Financing Administration, Department of Health and Human  
Services (1981-84)

Council on Government Policy and the Law; American  
Psychiatric Association, Washington, D.C. (1979-82)

National Council for Health Care Technology; U.S.  
Department of Health and Human Services (1979-82)

Steering Committee on Medical Injury Compensation,  
Institute of Medicine, National Academy of Sciences, (1976-  
78)

Co-Chairman: Medical-Legal Research Committee. Advisor to  
the Administrator: Health Services and Mental Health  
Administration, Department of Health, Education and Welfare  
(1972-74)

Secretary's Task-Force on Catastrophic Diseases, Department  
of Health, Education and Welfare (1968-69)

MEMBERSHIP IN  
PROFESSIONAL  
ORGANIZATIONS:

American College of Psychiatry  
American Psychiatric Association  
New York Academy of Medicine

LISTINGS:

Who's Who in America  
Who's Who in American Law  
The Best Doctors in America  
The Best Doctors in New York

CONSULT-  
ANTSHIPS:

Special Consultant, Ontario Government Enquiry on Mental Competency, Ontario, Canada (1989-92)

Editorial Advisory Board, Annual Bibliography of Bioethics. Kennedy Institute of Bioethics, Washington, D.C. (1979-2003)

Consultant, American Bar Association's Commission on Medical Professional Liability (1978-80); Co-principal Investigator; Study on "Designated Compensable Events"

Study Group on the Protection of Human Subjects in Biomedical Research, National Institutes of Health, Department of Health, Education and Welfare (1973-74)

Consultant and Special Assistant to the Administrator, Health Services and Mental Health Administration. U.S. Department of Health, Education and Welfare (1971-72)

BOOKS:

ETHICS OF HEALTH CARE. Institute of Medicine, National Academy of Sciences, Washington, D.C. 1974, (ed.)

LEGAL ISSUES IN PSYCHIATRIC CARE. New York: Harper & Row, 1975. (\_\_\_\_\_; Lieb, J.; Slaby, A.E.)

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HANDBOOK OF PSYCHIATRIC EMERGENCIES. New York: Medical Examination Co., 1975 (2nd ed., 1981); (3rd ed., 1986), (Slaby, A.E.; Lieb, J.; \_\_\_\_\_)

ETHICAL POLICY IN MENTAL HEALTH CARE: THE GOALS OF PSYCHIATRIC INTERVENTION. New York: Neale Watson Academic Publishers, 1977; and London: William Heinemann Medical Books, Ltd., 1977 (\_\_\_\_\_; Slaby, A.E.)

CLINICAL PSYCHIATRIC MEDICINE. Philadelphia: Harper & Row, 1981. (Slaby, A.E.; \_\_\_\_\_; Lieb, J.)

THE ANTHROPOLOGY OF MEDICINE. New York: Praeger Publisher, 1983. (Romanucci-Ross, L.; Moerman, D.; \_\_\_\_\_). (2nd. Edition, 1991), (3<sup>rd</sup>. Edition, 1997)

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ANTHROPOLOGIC REFLECTIONS ON FORENSIC PSYCHIATRY. Special Monograph for the International Journal of Law and Psychiatry. Pergamon, 1987. (Romanucci-Ross, L.; \_\_\_\_\_)

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INFORMATION. New York, New York: Basic Books, 1989.  
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Press, 2005

ARTICLES:

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I, No. 1, January 1972, 99. (\_\_\_\_\_; Woods, J.)

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Malpractice and Quality Assurance. Health and Society:  
Milbank Memorial Fund Quarterly, Vol. 51, No. 2, Spring  
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Reprinted: The Insurance Law Journal 613:69, 1974.  
(Havighurst, C.; \_\_\_\_\_)

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the Process of Societal Informed Consent. Medical Care  
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Care 12(11):835, 1974

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and Man 1(4):263, 1974

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(Slaby, A.E.; \_\_\_\_\_)

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A.E.)

Exploring Values and the Conscience Quagmire. Counselling  
and Values 23:184, 1977. (Fagan, P.; \_\_\_\_\_; Slaby, A.E.)

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Defining Compensable Events. Inquiry 14:341, 1977

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(\_\_\_\_\_; Barondess, J.)

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Neuroleptic Drugs: A Round-Table Discussion. Journal of  
Clinical Psychiatry 42(2):78, 1981. (Cancro, R.; Davis,  
J.M.; Klawans, J.L.; \_\_\_\_\_)

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Empirical Data. International Journal of Law and  
Psychiatry 5:52-63, 1982

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and Ethical Issues. Psychiatric Annals 12(8):799, 1982

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Medical Malpractice. Law, Medicine and Health Care 10:200,  
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6:17, 1983. (\_\_\_\_\_; Maxfield, C.)

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Psychiatry. International Journal of Law and Psychiatry  
6:293, 1983. (\_\_\_\_\_; Edlund, M.)

Quality of Life: An Ideological Critique. Perspectives in  
Biology and Medicine 28(4):591-607, 1985. (Edlund, M.;  
\_\_\_\_\_)

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the Case of Chemical Castration. International Journal of  
Law and Psychiatry 8:257-271, 1986. (\_\_\_\_\_; Weisstub, D.)

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Alternative to the Tort System of Medical Malpractice. New  
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Neural Substrates of Violent Behavior: A Preliminary Study with Positron Emission Tomography. British Journal of Psychiatry 151:668-673, 1987. (Volkow, N.; \_\_\_\_\_)

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